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COURT OF APPEALS  
DIVISION II

2016 DEC 27 PH 1:12

STATE OF WASHINGTON

BY                       
DEPUTY

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
IN AND FOR DIVISION TWO

THE STATE OF WASHINGTON,	)	COA No. 47800-5-II
	)	
Respondent,	)	DEFENDANT'S STATEMENT OF
	)	ADDITIONAL GROUNDS FOR REVIEW
v.	)	
	)	RAP <u>10.10</u>
JUSTIN DAVIS,	)	
	)	
Appellant.	)	

The Appellant, Justin Davis, hereinafter: "Davis,"  

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hereby moves the Court, pursuant to RAP 10.10, to review  
the following additional grounds to those raised by counsel  
in Appellant's Opening Brief:

A. ADDITIONAL GROUND ONE

1. The Trial Court Err'ed In Denying Davis's Motion to Withdraw his Plea of Guilty. At trial Davis elected to proceed on a pro se basis and the trial judge granted his motion to so proceed. Mid-trial, Davis negotiated a plea agreement with the State whereby three counts of assault in the first degree were dismissed in exchange for Davis's plea of guilty to one count of drive by shooting and one-count of unlawful possession of a firearm in the first degree. Davis then moved to withdraw his plea of guilty. 6/17/15 RP 36.

2. Without addressing the propriety of Davis's motion, the trial judge dismissed it, on the ground that Davis

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had entered his plea knowingly, voluntarily, and intelligently. 6/17/15 RP 39. But, the trial judge did not inquire into the nature of Davis's reasoning for seeking to withdraw his plea. Davis, proceeding pro se, made statements insupport of his motion to withdraw his plea of guilty that equates to a declaration that his plea of guilty was not voluntary. Davis informed the court that his plea "is not valid on its face and it should be null and void." 6/17/15 RP 36.

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3. Pursuant to CrR 4.2(f): "The court [shall] allow a defendant to withdraw his plea of guilty whenever it appears withdrawal is necessary to correct a manifest injustice." State v. Osborne, 102 Wn.2d 87 (1984). To be considered "manifest," the facts necessary to review the claimed error on appeal must be in the record and the defendant must show actual prejudice. State v. Mc Farland, 127 Wn.2d 322, 333, 899 P.2d 1251 (1995). Here, instead of inquiring into the facts which underlied Davis's motion to withdraw his plea, the trial judge deferred to his prior conclusion that Davis's plea of guilty was knowingly, voluntary, and intelligently entered. This tactic deprived Davis, who was proceeding on a pro se basis, constitutional right to due process. The trial judge should have inquired

and ruled upon the facts germane to Davis's motion to withdraw his plea of guilty, not whether his plea, as originally entered, was knowing, voluntary, and intelligently entered. Thus, the matter should be remanded to the trial court for an evidentiary hearing on Davis's motion to withdraw his plea of guilty.

B. ADDITIONAL GROUND TWO

4. The Trial Court Miscalculated Davis's Standard Range and Offender Score. The trial court determined that Davis's offender score for each of his two sentences was

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7. In making this determination the trial court counted separately into the offender score a. 09-20-2011 Unlawful Possession With Intent to Deliver and Unlawful Possession of a Controlled Substance prior convictions which encompassed the same criminal conduct within the meaning of RCW 9.94A.589.

5. Pursuant to RCW 9.94A.589(a)(1), two crimes that share the same criminal intent, involve the same victim, and occur at the same time, constitute the same criminal conduct. Pursuant to RCW 9.94A.525, the current sentencing court shall determine whether prior convictions constitute the same criminal conduct and if so add them into the offender score calculation of the current offense as one crime. Below, the trial court failed to make the required determination which

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resulted in an offender score of 7 for each of Davis's crimes rather than 6 for each of his crimes. This resulted in a standard range of 67-89 months for each of Davis's crimes at seriousness level 7, rather than a standard range of 57-75 months at offender score 6. The trial court imposed 70-month sentences for each conviction. That number is 3-months from the low-end of the standard range. Had the trial court followed that same strategy in sentencing Davis within the correct standard range, 57-75-months, Davis's sentence for each offense would have been 60-months for each offense, 3-months from the low-end of the standard range. Thus, Davis was prejudiced by the trial court's failure to do a same criminal conduct analysis. Thus, the matter should be reversed and remanded to the trial court for resentencing to 60-months on each count of conviction.

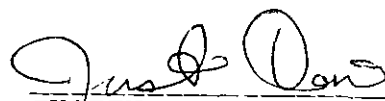
C. CONCLUSION

6. WHEREFORE, premises considered, this matter should be REVERSED and REMANDED to the trial court before a different judge for an evidentiary hearing and for resentencing.

It Should be so Ordered.

DATED this 19 day of December, 2016.

Respectfully submitted,  
BY THE APPELLANT:



JUSTIN DAVIS  
DOC-No. 352558, B=A=01L  
P.O. Box 769  
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DECLARATION OF MAILING DEC 27 PM 1:12

On the date indicated below, I, the Appellant, ~~pro se~~,  
deposited in the U.S. Legal Mail system at the Coyote Ridge  
Corrections Center a true and correct copy of my ~~STATEMENT~~  
OF ADDITIONAL GROUNDS FOR REVIEW, postage pre-paid and  
properly addressed to the following sources:

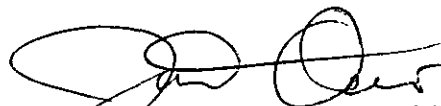
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DONE this 19 day of December, 2016.

BY THE APPELLANT PRO SE:



JUSTIN DAVIS  
COA No. 47800-5-II